

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND

UNITED STATES

v.

DANIEL BLUE

Crim. No. ELH-11-0508

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**MOTION FOR RELEASE OF DANIEL BLUE PRIOR TO
ISSUANCE OF FOURTH CIRCUIT MANDATE**

Daniel Blue, by and through his attorneys, James Wyda, Federal Public Defender for the District of Maryland, and Sapna Mirchandani, Appellate Attorney, hereby moves this Honorable Court to release him from BOP custody prior to issuance of the mandate by the Fourth Circuit Court of Appeals in Case Nos. 13-4069 and 15-4153. In support of his motion, Mr. Blue states as follows:

1. Mr. Blue was convicted of one count of possession with intent to distribute heroin, in violation of 21 U.S.C. § 841(a)(1), and one count of conspiracy to distribute and possess with intent to distribute heroin, in violation of 21 U.S.C. § 846. Mr. Blue was acquitted of a third count, charging him with possession with intent to distribute heroin in violation of 21 U.S.C. § 841. On January 18, 2013, the district court sentenced Mr. Blue to ten years' imprisonment, the mandatory minimum term following the government's filing of a sentence enhancement notice under 21 U.S.C. § 851 (doubling the mandatory minimum from five years to ten years).

2. Mr. Blue timely filed a notice of appeal in Case No. 13-4069. He raised two issues on appeal: *first*, whether evidence recovered pursuant to the officers' warrantless use of a global position device ("GPS") on his car should have been excluded from trial; and *second*, whether the government presented sufficient evidence to establish Mr. Blue's guilt on counts one and three.

3. On October 28, 2015, the Fourth Circuit held oral argument in the consolidated cases.

On December 10, 2015, a panel of the Fourth Circuit unanimously vacated Mr. Blue's convictions on counts one and three. In a published opinion authored by Judge Hamilton and joined by Judges Agee and Wynn, the Court held that government failed to present sufficient evidence to support either of Mr. Blue's convictions.¹

4. On December 15, 2015, undersigned counsel contacted the government, through U.S. Attorney John Sippel, to advise him of her wish to seek Mr. Blue's release before Christmas. (Mr. Blue already has served more than 4 years in federal custody following his arrest on September 15, 2011.) The government stated that it opposes Mr. Blue's release for two reasons. First, the government has not yet decided whether to seek a panel rehearing and, apparently, plans to ask the Fourth Circuit for additional time to make its decision. Second, the government believes this court lacks jurisdiction to order Mr. Blue's release prior to issuance of the mandate.

5. Mr. Blue contends that neither reason justifies his continued incarceration. First, a panel rehearing is extremely unlikely in this case, especially considering that the decision was unanimous, well-reasoned, and amply supported by binding Fourth Circuit law. Second, contrary to the government's belief, this court retains jurisdiction under Federal Rule of Appellate Procedure 9(b) to release Mr. Blue from custody, despite the fact that the mandate has not issued. *See* Fed. R. App. P. 9(b), adv. note ("Notwithstanding the fact that jurisdiction has passed to the court of appeals, both 18 U.S.C. §3143 and [Fed. R. Crim. P. 38[]] contemplate that the initial determination of whether a convicted defendant is to be released pending the appeal is to be made by the district court."); *United States v. Kvzvke*, 857 F.2d 1089 1091 (6th Cir. 1989) (district court retains jurisdiction to set conditions of release after appellate court's decision on the merits but before

¹ For the court's convenience, a copy of the Fourth Circuit judgment is attached as Exhibit A, and a copy of the Fourth Circuit published opinion is attached as Exhibit B.

mandate is issued).

6. In fact, less than one month ago, this court ordered the release of defendant Anthony Palomino-Coronado after the Fourth Court reversed his conviction and 30-year sentence on insufficiency grounds. *See United States v. Palomino-Coronado*, 4th Cir. Case No. 14-4416 . This court ordered his release, *without any conditions and over the government's objection*, so that he could return home in time for the Thanksgiving holiday.² (Mr. Palomino-Coronado was released on November 24, 2015. The Fourth Circuit subsequently issued its mandate on November 30, 2015.³)

WHEREFORE, Daniel Blue respectfully requests that this Honorable Court grant his motion for release without conditions prior to issuance of the Fourth Circuit mandate. Alternatively, he requests that this Honorable Court exercise its discretion under the Federal Rules of Appellate Procedure to order his release with appropriate conditions prior to the mandate. Counsel will be available at the court's convenience for a telephone conference to discuss these matters.

Respectfully submitted this 15th day of December, 2015.

JAMES WYDA
Federal Public Defender for the
District of Maryland

/s/ Sapna Mirchandani
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Counsel for Appellant

² A copy of the docket sheet in *United States v. Palomino-Coronado*, Case No. RWT-12-0287, is attached as Exhibit C.

³ A printout from the Bureau of Prisons website (attached as Exhibit D) shows that Anthony Palomino-Coronado was released from custody on November 24, 2015. The Fourth Circuit issued its mandate (attached as Exhibit E) on November 20, 2015.

CERTIFICATE OF SERVICE

This is to certify that the foregoing Motion for Release of Daniel Blue Prior to Issuance of Fourth Circuit Mandate was filed electronically via CM/ECF, which automatically sends notice of such filing to the following registered CM/ECF user:

John W. Sippel, Jr.
Assistant U.S. Attorney
Office of the U.S. Attorney
36 South Charles Street, 4th Floor
Baltimore, MD 21201

on this 15th day of December, 2015.

/s/ Sapna Mirchandani
Sapna Mirchandani